Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Sprint PCS and AT&T Petitions for	)	WT Docket No. 01-316
Declaratory Rulings on CMRS	)	
Access Charge Issues	)	
	)	

WORLDCOM REPLY COMMENTS

I. Introduction

Initial comments on these petitions evince substantial confusion about the relevant facts, the governing law, and the optimal interconnection policy for interexchange carriers (IXCs) and commercial mobile radio services (CMRS) carriers. At the source of that confusion is a misguided attempt by a number of CMRS providers to use this proceeding to supplant the existing convention under which they interconnect with IXCs on a bill-and-keep basis. They would replace it with an access charge regime similar to what has long plagued wireline interconnection. It is impossible to overstate the wrong-headedness of their effort. The imposition of access charges on IXCs by CMRS providers with which they interconnect indirectly would unambiguously harm competition in both markets. A careful review of applicable precedent shows that the Commission has never authorized such charges. There is no justification to do so now.

II. Existing rules do not permit wireless carriers to impose access charges on IXCs.

The initial comments of wireless carriers are, to some extent, in conflict on the question of whether existing rules allow them to impose access charges on IXCs. Cellular Mobile Systems of St. Cloud suggests that specific authority for CMRS providers may be needed.[1] But Sprint PCS and several other wireless providers conclude that because the Commission has not explicitly prohibited them from imposing access charges on AT&T and other IXCs, they are therefore free to do so.[2] As WorldCom demonstrated in our initial comments, this is not the case. On the only occasion when the Commission examined the application of access charges in this context, it proposed establishing rules to authorize access charges for the circumstance where an IXC and CMRS carrier interconnect indirectly via an incumbent local exchange carrier (LEC) tandem switch.[3] The Commission never acted on that proposal, and thus never authorized such charges. The fact that the Commission took the step of reaching a tentative conclusion and proposing new rules, plainly shows that pre-existing rules did not allow these charges. As one would expect, absent the adoption of such rules, virtually the entire wireless industry has continued to exchange traffic with IXCs on a bill-and-keep basis.

Wireless carriers attempt to explain away this near-universal practice by claiming that the traffic only recently became sufficient to warrant charging.[4] Or, that signaling systems and operational support systems could not previously support access billing.[5] No evidence is provided to support the claim about the level of traffic. And it is inconceivable that wireless carriers would delay systems upgrades if such were needed to bill for legitimate revenue. Indeed, the claim itself is utterly inconsistent with the extent

[1] Comments of Cellular Mobile Systems of St. Cloud at 3.
[2] Comments of Sprint PCS at 2; *see also, e.g.,* Comments of Nextel Communications, Inc. at 1.
[3] *See* WorldCom Comments at 5 for a discussion of the applicable precedent.
[4] *See, e.g.,* Comments of Salmon PCS LLC at 7.

of competition that the wireless industry constantly attributes to itself. If, as wireless carriers claim, CMRS are robustly competitive, then no carrier could willingly forego such an obvious revenue source as access charges. Unless, of course, all recognized that they could not lawfully impose access charges.

III. Bill-and-keep is the optimal regime for CMRS-IXC interconnection.

As CTIA, the largest wireless trade association recognizes, bill and keep is the most efficient economic basis for the exchange of traffic between CMRS carriers and IXCs.[6] Nonetheless, a few wireless carriers claim that bill and keep is not the optimal regime for the exchange of this traffic. Their arguments are ill-founded and suffer from a number of factual and analytical errors.

Sprint PCS and several other CMRS carriers appear to believe that bill and keep produces a windfall for IXCs.[7] This seems to be based on the erroneous view that IXC end user rates include a cost component for terminating access. With respect to any individual call, this is simply false. Under the statute and the Commission's rules, IXCs are required to have geographically averaged and integrated rates.[8] One consequence of this is that end user prices do not reflect the costs associated with a particular call, but only the average total costs of providing interexchange service. Thus, IXCs gain no windfall from the current bill and keep regime. If, on a prospective basis, the Commission adopted rules to authorize the imposition of access charges by CMRS

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[5] *See, e.g.,* Comments of Verizon Wireless at 6.
[6] Comments of the Cellular Telecommunications & Internet Association at 3.
[7] Comments of Sprint PCS at 7; *see also, e.g.,* Comments of Cingular Wireless LLC at 5.
[8] 47 U.S.C. § 254(g); 47 C.F.R. § 64.1801.

carriers, then long distance prices generally would have to increase, not just the price for calls originated or terminated on wireless networks.

Sprint PCS's misunderstanding about long distance pricing also causes it to conclude incorrectly that, under bill and keep, consumers "pay twice."[9] This convoluted view appears to be based on the misconception that, since long distance prices "include" a terminating access component, forcing CMRS carriers to recover network costs from end users causes end users to pay double. However, both wireless and interexchange markets are characterized by a substantial amount of competition. It would be difficult for providers in either market to impose supra-competitive rates on end users. Where prices are not supra-competitive, end users cannot be "paying twice."

Sprint PCS also argues that unless wireless carriers are permitted to impose access charges, they cannot possibly compete head-to-head with LECs.[10] This is wrong for at least two reasons. First, it flies in the face of real world evidence. The competitive local exchange industry, which is allowed to impose access charges, is in near-complete financial disarray. The wireless industry, which has not been allowed to impose access charges, appears to be substantially healthier.

Second, wireless carriers have tremendous advantages over wireline carriers. They are not required to provide equal access or presubscription. They are not subject to pervasive state regulation. They have total flexibility to price and bundle their products however they see fit. Indeed, it seems likely that the vast majority of incumbent LECs would happily forego the right to collect access charges if they could, in exchange, have the flexibility and other advantages that CMRS carriers enjoy. In seeking authority to

[9] Comments of Sprint PCS at 7.
[10] *Id.* at 11.

impose access charges, wireless carriers are not asking for competitive parity, but rather are seeking to have their cake and eat it too.

Western Wireless argues incomprehensibly that the existing bill and keep regime may cause economic distortion by sending the wrong pricing signals.[11] Indeed, the opposite is true. The current regime forces wireless providers to compete head-to-head for end users. The low cost provider of CMRS will succeed in this competition. Under access charges, wireless carriers would enjoy a protected revenue stream that would not necessarily reflect marketplace success. Wireless carriers would, in effect, subsidize end user prices with access revenues. These subsidies would inevitably distort wireless competition, increase long distance prices, and harm consumers across the board. In WorldCom's view, bill and keep is a pro-competitive regime for all forms of interconnection within the public switched telephone network, including CMRS-IXC interconnection.

IV. Neither section 201 nor section 202 of the Communications requires IXCs to pay CMRS access charges.

Several wireless carriers assert that AT&T's refusal to pay Sprint PCS's access charges amounts to an unjust and unreasonable practice in violation of section 201(b) or, alternatively, an unreasonably discriminatory practice in violation of section 202(a).[12] These arguments are meritless. As AT&T demonstrated conclusively in its comments, neither of those sections governs the behavior of customers, not even customers that are also carriers.[13] Those sections apply only to telecommunications carriers as *providers* of

[11] Comments of Western Wireless Corporation at 3.
[12] *See, e.g.,* Comments of Cingular Wireless LLC at 5; *see also* Comments of Verizon Wireless at 9-10.
[13] Comments of AT&T Corp. at 12-19.

services, and not in their capacity as *purchasers* of services. Otherwise, the decision by a carrier to purchase any telecommunications service from one carrier rather than another, including a dedicated service, would give rise to a potential claim under these provisions of the Act. This cannot be the case. It would yield the absurd result that a carrier might be found liable for preferring one vendor over another. This is a matter best left to the marketplace, and not to the heavy hand of regulation.

V. Conclusion

These petitions provide the Commission with an opportunity either to expand its regulatory oversight to include interconnection arrangements that heretofore have worked perfectly well without regulation, or to leave in place the stable bill and keep regime that virtually the entire industry has adhered to for twenty years. The Commission should be pleased that, at least occasionally, it is given a "no-brainer."

Respectfully submitted,

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